

Towards a Comparative History of the Power to Pardon in Medieval and Early Modern Christian Europe

An Introduction

On 20 January 2025, the first day of his second term, U.S. President Donald J. Trump issued a proclamation granting pardons or commutations of sentences to over 1,500 individuals convicted for offences “related to the events at or near the United States Capitol on January 6, 2021”.¹ Unsurprisingly, this mass pardon provoked widespread reactions and commentary, particularly from Trump’s political opponents, who denounced it as an authoritarian attack on the U.S. criminal justice system. While extraordinary, this measure aligned with the theatrical and interest-driven use of presidential pardons that characterised Trump’s first presidency. For legal historian Bernadette Meyler, by transforming what was once a routine bureaucratic procedure into a series of public performances, Trump’s “theatre of pardoning” is somewhat reminiscent of the uses of clemency by medieval and early modern European monarchs to stage their sovereign power over the life and death of their subjects. It reflects, Meyler writes, a vision of pardoning as the ruler’s absolute ability to make exceptions to ordinary law, thereby further blurring the boundary between executive and judicial powers.²

As spectacular and questionable as Trump’s use of pardoning may seem, he is far from the first U.S. president in recent history to face criticism for allegedly abusing such power for personal gain and to reward his supporters.³ In fact, many jurists and political scientists today consider the ability of a Head of State to grant clemency in criminal matters (a common practice in many contemporary legal systems) as a “residue of the royal power”⁴ once held by medieval and early modern kings, who exercised their privilege to pardon criminals by divine right and with few restrictions. For these scholars, the arbitrary nature of the power to pardon, inherited from absolute monarchies, thus makes it hardly compatible with the principle of fair and independent justice that underpins modern democracies, and

1 TRUMP, Granting Pardons (20/01/2025).

2 MEYLER, Theaters of Pardoning, pp. 1–2; ID., Transforming.

3 CROUCH, The Presidential Pardon Power; DODD, Mass Pardons; TOOBIN, The Pardon.

4 NOVAK, Comparative Executive Clemency, p. 4.

it should be further supplemented by alternative clemency mechanisms within the judicial channel.⁵

The history of the power to pardon and its relationship to law, justice, and political authority is the central theme of this collective volume. It examines the use of pardoning in late medieval and early modern Christian Europe, and how it became a crucial component of the legal traditions that have shaped most contemporary Western judicial systems. This endeavour requires some clarification. First, our choice to speak of “Christian Europe” to define the cultural and geographical scope of this volume is motivated by the desire to highlight the central role played by Christian conceptions of mercy and forgiveness in shaping the judicial power to pardon. Second, what we call “pardon” or “pardoning” (German *Gnade* or *Begnädigung*, French *grâce* or *gracier*, etc.), in the context of criminal law and penal practice, refers to the full or partial remission of the legal consequences or punishments originally prescribed for a specific offence.⁶ Since this volume focuses on serious, high justice offences, (*Peinliche Vergehen*) the applicable penalties were invariably severe, including capital punishment, corporal penalties involving bodily harm or loss of honour, and long-term exile.

The issuing of a pardon should be distinguished from other legal mechanisms such as the granting of privilege and dispensation (the non-application of a specific law in a particular case), which were relevant primarily outside the realm of criminal law. Moreover, while modern law typically differentiates between pardon and amnesty – the latter being a measure that forgives and expunges from collective memory the past actions of an entire group, often following a war and issued by the legislative power – this distinction was far less rigid in the premodern period, as some rulers had the flexibility to adapt their power to pardon and confer upon it the function of what we call amnesty, which they could extend to individuals, groups, or entire communities.⁷ Another key difference between past and present pardoning practices lies in their procedural application. Today, except for amnesties, most clemency measures require that the recipient has already been convicted by a court. In contrast, during the medieval and early modern periods, pardons were also granted prior to trial (albeit with decreasing frequency), enabling individuals to avoid not only the execution of their sentence but judicial conviction itself. These pardons were not, however, unconditional, as they were often accompanied by additional requirements, such as the payment of a fine or the conclusion of a peace agreement with the victim’s family.

5 For further discussions, see RUIZ FABRI, DELLA MORTE, LAMBERT ABDELGAWAD, MARTIN-CHENUT, La clémence; PASCOE, NOVAK, Executive Clemency; LOVE, After Trump.

6 LUDWIG, VERREYCKEN, Begnadigung.

7 LÉVY, Pardons; GAUVARD, Pardonner; FRISCH, Forgetting Differences; FUCHS, Amnestie.

Surprisingly, despite a spectacular body of literature produced over the past fifty years, the history of the late medieval and early modern power to pardon has rarely been approached from a comparative European perspective.⁸ Until now, most research has focused on studying pardoning practices within a single territory, such as a city, principality, or kingdom, without engaging in a systematic comparison with neighbouring regions. With this collective volume, we therefore aim to take a first step towards a more comprehensive approach to the history of pardon. The contributions gathered in this book cover a broad range of geographical contexts and time periods, including the Apostolic Penitentiary, Burgundy, France, the Holy Roman Empire, the Iberic Peninsula, the Low Countries, and Russia, from the twelfth century to the late eighteenth century. This diversity enables an examination of various legal and political frameworks, highlighting both commonalities and divergences in the medieval and early modern practices of pardoning.

This brings us to another strength of this volume: it moves away from the traditional state-centred approach to the power to pardon, which tends to focus exclusively on the practice of pardoning as the expression and triumph of monarchical sovereignty. Without rejecting the central role of pardon in state development, the contributions in this volume highlight the numerous challenges and controversies inherent in the practice of pardoning, exploring the wide range of actors and levels of authority involved in pardon procedures, starting with the recipients themselves, who, in many respects, were the central protagonists of the pardoning process.

1. The Power to Pardon and Legal Pluralities

Identifying a single origin for the power to pardon seems rather implausible, given its deep historical roots that stretch back to the earliest written records of human civilisation. To give just a few examples: as early as the second millennium BCE, the Code of Hammurabi included provisions for pardoning adultery by the king and the wronged husband.⁹ In Ancient Greece, the first documented instance of general amnesty is commonly attributed to Thrasybulus, following the restoration of Athenian democracy in 403 BCE.¹⁰ In Imperial Rome, the power to pardon, formerly possessed by the magistrates and the Senate, was rapidly concentrated in the hands of the Prince by virtue of his clemency (*Clementia principis*).¹¹ In the Early and High Middle Ages, the practice of granting pardons was closely linked

8 For a more systematic historiographical overview, see VERREYCKEN, *The Power to Pardon*.

9 GOOD, *Capital Punishment*.

10 JOYCE, *Amnesty*.

11 DOWLING, *Clemency*; FLAMERIE DE LACHAPELLE, *Clementia*. A spatio-temporal overview of amnesties in the ancient world is also provided by HARTER-UIBOPUU, *Vergeben*.

to Christian notions of grace (*gratia*), charity (*caritas*), and, more importantly, mercy (*misericordia*), defined by Augustine as a form of compassion used to preserve justice and pardon the penitent.¹² Together, these became essential attributes of the good Christian ruler, based on the imitation of God's divine justice and governance.¹³

The power to grant pardons was typically vested in those who held judicial authority within a specific territory or over a particular group of people. The fragmentation of judicial authority during the European Early and High Middle Ages meant that the power to grant pardons was distributed among a variety of local lords, princes, and magistrates, although it remained ultimately subordinated to the authority of the king or emperor, who held (at least formally) the highest jurisdiction in matters of mercy.¹⁴ However, with the emergence of public criminal justice in the late medieval and early modern periods, the power to grant pardons gradually came to be recognised as a sovereign privilege (*regalia*), alongside the rights to impose criminal penalties or to judge major offences such as homicide. This makes the power to pardon a key factor in state development and the consolidation of monarchical – or more broadly, ruling – power.¹⁵ To better understand the role of mercy within the medieval and early modern legal system, German historiography employs the concept of “*judging with grace*” (*Richten nach Gnade*), in contrast to “*judging according to law*” (*Richten nach Recht*). Given the absence of a fully developed penal framework and the limited means to consider the specific circumstances of individual cases during trials, *judging with grace* aimed to issue more lenient sentences than those prescribed by law.¹⁶ This approach is reflected in the formula “preferring mercy to the rigour of justice” (*préférant miséricorde à rigueur de justice*), commonly found in pardon records.¹⁷

However, recent research has emphasised that the practice of pardoning was always more than a mere strategy for navigating undifferentiated legal norms; *judging with grace* is, in fact, a far more complex phenomenon.¹⁸ Scholars have highlighted that the supplications and arguments introduced by petitioners formed an integral part of a loosely defined judicial process and contributed to the concretisation of

12 AUGUSTINE, *The City of God*, IX, 5, p. 365.

13 GANSHOF, *La gratia*; MCCUNE, *The Ideology of Mercy*; SCHREINER, *Strengkeit des gerichts*; VINCENT, *Justice*; BYRNE, *Justice*; MOESCH, *Augustine*; PROSPERI, *Crime*.

14 KOZIOL, *Begging Pardon*.

15 MUCHEMBLED, *Le temps des supplices*; GAUVARD, *Condamner à mort*; HAUG-MORITZ, ULLMANN, *Frühneuzeitliche Supplikationspraxis*; NUBOLA, WÜRGLE, *Bittschriften*; HÄRTER, NUBOLA, *Grazia*.

16 For a traditional view, see NEIDERT, SELLERT, *Richten nach Gnade*.

17 DAUVEN, ROUSSEAU, *Préférant miséricorde*.

18 A crucial argument is that legitimacy and acceptance could be achieved through the communicative involvement of the parties' social environment in the proceedings. The admission of supplications and the granting of pardons thus served to establish legitimacy. See ARLINGHAUS, *Gnade*.

the law.¹⁹ Moreover, interpreting pre-modern legal norms as absolute overlooks the fact that judgments were always informed by a range of legal sources, each with distinct sets of penalties.²⁰ This diversity in the sources of law significantly broadened the spectrum of possible criminal punishment, resulting in considerable variations in judicial outcomes.

From a broader perspective, the practice of pardoning can therefore be described as a factor contributing to *legal pluralism* or, perhaps more accurately, *normative pluralism*, since multiple normative systems coexisted in the administration of justice. In contrast to a unified legal framework, which is often invoked as an ideal type, the exercise of sovereignty in criminal cases reveals a persistent interplay between different legal and social normative orders, most notably reflected in the central role that honour and reputation played in how justice addressed acts of violence.²¹ At the same time, it is worth noting that some political and theological debates in the fifteenth century increasingly framed pardons as the antithesis of justice, and thus as contrary to the principle of equity.²² These debates undoubtedly influenced the practice of pardoning, particularly with regard to the universal value of divine law, or natural law, although they did not result in its suppression.

As a public legal document, the pardon was typically issued by a chancery in the name of the merciful ruler, be it a king, prince, or city council. Known variously as *lettres de rémission* in France and the Low Countries, *carta pardonacionis* in England, *carta de perdão* in Portugal, etc., these charters were generally granted in response to petitions for mercy submitted to the competent authority holding the power to pardon, either by the offenders themselves or by third parties. Thanks to the abundance of available documentation, the study of medieval and early modern pardon letters has garnered growing interest from historians and legal scholars. In the late 1960s and early 1970s, Naomi Hurnard and María Inmaculada Rodríguez Flores were among the first to conduct systematic analyses of the pardon process in medieval England and Castile.²³ The subsequent rise of microhistory and the history of crime in the 1980s and 1990s further spurred interest, leading to influential works by scholars such as Natalie Zemon Davis, Robert Muchembled, and Claude Gauvard on the French *lettres de rémission*.²⁴ Since then, research on

19 Among others: BAUER, Gnadenbitten; NEITHARD, Richten; SCHORER, Strafgerichtsbarkeit.

20 OESTMANN, Legal Layers, pp. 7–9.

21 On this coexistence, interaction and conflict of normative systems in the context of judicial decision-making, see DUVE, Rechtsgeschichte; LUDWIG, Konzeptforum Normenkonkurrenz. On the role of legal and social norms in understanding violence, see SCHWERHOFF, Justice.

22 HOHLSTEIN, Strenge.

23 HURNARD, The King's Pardon; RODRIGUEZ FLORES, El perdon.

24 ZEMON DAVIS, Fiction in the Archives; MUCHEMBLEMED, La violence au village; GAUWARD, De grace especial.

medieval and early modern pardoning practices has flourished across Europe, encompassing France,²⁵ England,²⁶ the Low Countries,²⁷ the principalities of the Holy Roman Empire,²⁸ Spain,²⁹ Portugal,³⁰ Italy,³¹ the Nordic countries,³² and the Papacy.³³

Overall, pardons appear to have been a ubiquitous feature of pre-modern European criminal justice systems. This does not mean, of course, that the uses and practices of pardon followed uniform patterns across the medieval and early modern Christian world. On the contrary, the development of the power to pardon in each region was shaped by local legal traditions, institutional frameworks, and criminal justice systems. For example, the procedures to secure a pardon in France, Spain, and Portugal were not identical. While English pardon letters and papal absolutions occasionally shared similar terminology, they differed markedly in form and, to some extent, in function. Similarly, in the Habsburg Low Countries, the Holy Roman Empire, or the Italian city-states, the legal and political implications of receiving a pardon varied considerably due to the different models of government in each polity.

To capture this diversity, the volume is organised into three sections, each shaped by a distinct analytical perspective.

2. Norms, Pluralities, and the Challenges for Mercy

Research on the history of pardoning has traditionally focused on the right to pardon held by major European monarchs, such as the kings of England and France, placing particular emphasis on the role of mercy in early modern state formation. The rise of an increasingly repressive judicial system from the fifteenth century onwards, marked by a shift from financial penalties to corporal punishment, and by the centralisation of certain crimes under royal jurisdiction, coincided with a

25 PARESIS, *Aux marges du royaume*; ABAD, *La grâce du roi*.

26 KESSELRING, *Mercy*; LACEY, *The Royal Pardon*.

27 VROLIJK, *Recht door gratie*; ARNADE, *PRENVENIER*, *Honor*; BEAULANT, *Pratiques de la grâce*.

28 BAUER, *Gnadenbitten*; BLICKLE, *Laufen gen Hof*; REHSE, *Supplikations- und Gnadenpraxis*; PERDON, *Gestaltungspotentiale*; PÉGEOT, *DERNIAME*, *HÉNIN*, *Les lettres de rémission*; HAUG-MORITZ, *ULLMANN*, *Frühneuzeitliche Supplikationspraxis*.

29 CHAULET, *Crimes*; MANTECÓN, *La gracia regia*; GONZÁLEZ ZALACAIN, *El perdon real*.

30 DUARTE, *Justiça*; ABREU-FERREIRA, *Women*.

31 NICCOLI, *Perdonare*; KUMHERA, *The Benefits of Peace*.

32 ÖSTERBERG, *BAUGE SOGNER*, *People Meet the Law*; KOSKIVIRTA, *The Enemy Within*; KOTKAS, *Royal Police*.

33 SALONEN, *Penitentiary*; FOSI, *Papal Justice*; LUSSET, *Crime*; ERDÉLYI, *Negotiating Violence*; BLASTENBREI, *Funktion*.

dramatic expansion of the sovereign power to pardon. Punishment and pardon thus appear as two sides of the same coin in the process of state formation through judicial coercion.³⁴

Even before the widespread practice of granting pardons on a large scale, the power to pardon already held a central place in medieval political and theological debates. At the heart of these discussions was the expectation that a monarch, as a reflection of God's justice, must exercise mercy in a just and measured way. The Bible, in this regard, served as a crucial reference point for reflections on the nature of kingship.³⁵ Philippa Byrne's contribution to the scholastic debate surrounding Solomon's pardon illustrates how a theological discussion could have concrete political implications. Solomon, a remarkable king in his youth, committed numerous sins in the later years of his reign. The central question posed by medieval theologians was whether he could have been absolved by God had he repented before his death, or whether he was eternally damned. Far from being a purely theoretical issue, this debate raised fundamental concerns about the limits of repentance, particularly in the case of sinful rulers. If God's power to forgive is infinite, should it extend even to those who show little or no repentance, despite earlier virtue or accomplishment? Comparable questions emerged in discussions of royal and princely pardons in the late Middle Ages, especially when petitioners lacked genuine contrition or deliberately misled the sovereign, leading to pardons perceived as unjust.³⁶ As Byrne also demonstrates, these debates coincided with the era of the Crusades, when renewed interest in the reconquest of Jerusalem cast Solomon's political legacy in a new light, despite the failures that marked the end of his reign.

Echoes of such discussions can also be found in the *Fürstenspiegel* (Mirror for princes) literature, which was popular throughout the late Middle Ages and the early modern period.³⁷ The typification of the ruler as righteous and therefore also punitive was closely linked to the expectation that a good ruler must also be merciful. Only when punishment and mercy were exercised in tandem did they constitute an ideal of just rulership. In contemporary teachings on governance, this interplay between harsh punishment and mercy was seen as essential to the maintenance of order: "with good words and harsh punishments, one keeps the common people in check and in good obedience" (*mit guten worten vnd harten straffen, behelt man den gemeinen Pöfel im zaum, vnd gutem gehorsam*). Accordingly, Mansfeld Chancellor Georg Lauterbeck, in his sixteenth-century treatise on governance, advised that

34 For examples of this interpretation, see MUCHEMBLED, *Le temps des supplices*; ROUSSEAU, *Politiques judiciaires*; GAUVARD, *Condamner à mort*.

35 BUC, *Pouvoir royal*.

36 VERREYCKEN, *Tempérer la grâce du roi*.

37 MÜHLEISEN, STAMMEN, *Politische Tugendlehre*.

rulers should “at times listen and not listen, see and not see” (*vnterzeiten hören, vnd nicht hören, sehen vnd nicht sehen*).³⁸

At the same time, it became increasingly necessary to establish a well-structured procedure and administrative system to manage the vast number of petitions addressed to the monarchs. This system also needed to be able to respond efficiently, by issuing pardon letters within a reasonable timeframe. The first large-scale administration of this kind was probably the Apostolic Penitentiary, which gradually emerged in the thirteenth century and served as a model for the royal and princely chanceries that developed thereafter.³⁹ This likely explains, at least in part, why pardon procedures, the format of pardon letters, and the vocabulary of mercy displayed striking similarities across Europe. Yet, the bureaucratisation of pardoning remained a persistent challenge, as medieval literature attests. As early as the twelfth century, Pierre de Blois, in his dialogue between the Abbot of Bonneval and Henry II of England, portrays the king complaining of being relentlessly pursued by petitioners, even in churches, where they disturbed him during mass.⁴⁰ A similar scene appears in the early fifteenth-century *The Book of Peace* by Christine de Pizan, where she describes how, upon leaving mass, King Charles V of France was immediately besieged by “all sorts of people, rich or poor, ladies or damsels, widows, or others” (*toutes manieres de gens, riches ou pauvres, dames ou damoiselles, femmes veuves ou autres*) presenting their supplications.⁴¹ Echoing these accounts, the French *Ordonnance Cabochienne* of 1413, which sought to reform the royal government, condemned the “importunate infestation and multiplication of such particular and unnecessary requests” (*infestation importunées et multiplication de telles requestes particulieres et inutiles*), which prevented the king and his council from focusing on the kingdom’s essential affairs.⁴² In the early modern period, complaints about the seemingly endless stream of pardon petitions persisted, and authorities attempted to curb this flow by imposing bans. For example, early or persistent pleas for mercy were prohibited. In the case of duels, however, there were also legal provisions in German-speaking countries that categorically excluded the

38 Georg LAUTERBECK, *Regentenbuch*. Aus vielen trefflichen alten und neuen Historien/mit sonderm fleis zusammen gezogen. Allen Regenten und Oberkeiten/zu anrichtung und besserung/Erbarer und guter Pollicey /Christlichen und nötigen zu wissen, 2. ed. Leipzig 1557, fol. 79v, 80r.

39 See references in note 33.

40 LACHAUD, *Pétitions parlementaires*, p. 99.

41 PIZAN, *Le Livre des faits*, p. 44.

42 *Ordonnance cabochienne* (26–27 May 1413), p. 139.

granting of mercy, meaning that no petitions were to be submitted. Ultimately, however, these measures proved ineffective.⁴³

From the sixteenth century onwards, the ongoing bureaucratisation of state administration further complicated the pardon process and increased the number of intermediaries involved, as illustrated by the case of the Habsburg Netherlands, which Luke Giraudet explores later in this volume. However, not all monarchs succeeded in creating an efficient administrative system capable of managing the continuous influx of petitions for mercy. This issue is strikingly exemplified in Nancy Kollmann's chapter on pardons and petitioning in eighteenth-century Russia. Her analysis reveals that Tsar Paul I faced nearly identical problems to those described by Pierre de Blois and Christine de Pizan, leading him to complain about the overwhelming number of frivolous petitions that hindered his ability to govern effectively. Yet, as Kollmann demonstrates, rather than seeking to reduce the number of petitions, Paul I and his successors actively staged their merciful power to reinforce their legitimacy. The granting of pardons on Good Friday, an established tradition among many medieval and early modern monarchs, provided the tsars with a crucial opportunity to assert themselves as merciful sovereigns. This dynamic reveals a paradox: although tsarist power increasingly struggled to govern efficiently due to the sheer volume of petitions and the absence of an effective administrative system to process them, it could not afford to curtail its role as a dispenser of mercy.

Traditionally, a significant portion of historiography on the power to pardon has focused on acts of pardon granted for criminal offences such as homicide, assault, and sexual violence. However, the power to pardon also played a crucial role in regulating political crimes that directly challenged the authority of the monarch. One particularly well-documented example of this is the use of royal pardon in the aftermath of suppressed rebellions. This was notably the case in England following the Peasants' Revolt of 1381.⁴⁴ Similarly, in the Low Countries, the dukes of Burgundy and their Habsburg successors frequently resorted to granting pardons during urban revolts in the fifteenth century and religious conflicts in the sixteenth century.⁴⁵ However, for medieval and early modern monarchs, granting pardons to those who had defied their authority was often a delicate matter. This concern was explicitly voiced in the Parliament of Devils in 1459, during the Wars of the Roses, when Henry VI was urged to cease granting pardons to the Yorkist faction, which had repeatedly challenged his rule.⁴⁶ For royal mercy to be an effective tool

43 For the limitation of the right to petition in criminal law provisions, see, for example, RUDOLPH, *Peinliche Strafjustiz*, p. 271; SCHWERHOFF, *Das Kölner Supplikenwesen*; HÄRTER, *Aushandeln*. For the special case of duel legislation, see: LUDWIG, *Das Duell*, pp. 133–163.

44 LACEY, "Grace for the Rebels".

45 SOEN, *The City Defiant*.

46 VERREYCKEN, *Tempérer la grâce du roi*, pp. 263–265.

for reasserting authority over rebels or insurgents, it often had to be preceded by a period of repression.

This dynamic is particularly evident in Gerd Schwerhoff's contribution, which analyses the pardons issued after the Peasants' War of 1525 in the Holy Roman Empire, one of the most significant uprisings of the late medieval and early modern periods. Schwerhoff demonstrates how, in the immediate aftermath of the revolt, the penalties and pardons granted to rebels were largely arbitrary, with formal criminal procedures gradually gaining prominence over time. In the long run, authorities came to realise that an exclusively repressive policy was unsustainable, given the extent to which the revolt had disrupted society. As a result, efforts to restore peace through acts of mercy became an indispensable component of governance.

3. Agency, Social Vulnerability, and Petitioning for Pardon

Analysed as a means to understand sovereign pardon policies, letters of pardon also serve as valuable sources for studying the judicial practices of litigants. Most of these letters were granted in response to a request, petition, or supplication submitted by the individual seeking clemency. In most chanceries, these petitions were incorporated into the opening of the pardon letter with only minor modifications. In some instances, such as in late medieval England or the Habsburg Low Countries, the original petitions have also been preserved in chancery archives.⁴⁷ These documents, though filtered and indirect, raise an important question: do they offer access to the "voices from the silent masses"?⁴⁸ As Natalie Zemon Davis cautioned us, the narratives contained in pardon letters and petitions for pardon were carefully crafted by litigants and their advisors to maximise their chances of obtaining a pardon. Filled with legal and rhetorical arguments designed to favour the supplicant, these texts should not be regarded as unbiased testimonies, but rather as strategic appeals aimed at securing royal mercy.⁴⁹

More recently, legal and judicial historians have focused on how litigants strategically navigated judicial systems, prompting a reassessment of how petitioners sought pardons. A key concept in this regard is legal agency, which highlights the ability of litigants to elaborate and pursue judicial strategies. Another important concept, the *use of justice* (*Justiznutzung*), originally developed by Martin Dinges, suggests that resorting to the justice system was just one of many options available

47 LACEY, Petitioners. For the Low Countries, see the contribution of Luke Giraudet.

48 WÜGLER, Voices.

49 ZEMON DAVIS, Fiction in the Archives.

for resolving a conflict. Indeed, litigants often engaged in *forum shopping*,⁵⁰ deliberately choosing the court they believed most likely to rule in their favour. Given the legal and jurisdictional pluralism of the late Middle Ages, different authorities held the power to grant pardons, and these acts of clemency were not always in competition with one another but rather complementary. This is illustrated in Elisabeth Lusset's chapter on clerics guilty of homicide who sought pardon from both the King of France and the Pope. According to Lusset, although this was a deliberate strategy, this did not constitute forum shopping, as papal and royal pardons addressed distinct concerns. Receiving papal absolution restored a cleric's standing within the Church and ensured spiritual salvation, while royal remission provided immunity from prosecution under secular law. However, this does not mean that the two systems operated in complete isolation. Lusset's comparative analysis of royal petitions and papal supplications reveals that clerics often used a pardon from one authority as leverage to secure clemency from the other. Moreover, there is a striking similarity in the descriptions of crimes in petitions to both the Pope and the King, suggesting that clerics strategically economised their efforts by maintaining consistent narratives.

For historians, judicial archives, including pardon letters, often provide exceptional access to the lives of marginalised individuals who are otherwise poorly documented or have left far fewer written records than the elite. Of course, these "subaltern voices" are inevitably distorted by their recording in judicial archives, reflecting not only the testimonies of the litigants but also the ideology and frameworks of thought of the judicial authorities who produced these records.⁵¹ Such sources nonetheless remain essential for documenting the experiences of the most vulnerable individuals when they come into contact with the justice system, thereby revealing more clearly how they encountered or, at times, actively used the law.

In that sense, Tomás Mantecón's contribution illustrates how women actively participated in judicial procedures through the practice of pardon. In early modern Castile, as in the rest of Europe, women were significantly less likely than men to be convicted by the courts, except in relation to certain gender-specific crimes, such as infanticide. This has led to a relative invisibility of women in judicial archives, a phenomenon that recent scholarship has brought to light.⁵² Mantecón shows that Spanish women most frequently appear on the side of the victim: as survivors of violence or as family members of the deceased. They played an important role in reconciliation processes and peace agreements, which were integral to the practice of pardoning in early modern Castile. Indeed, one of the essential functions of

50 JAKAB, Forum Shopping; on the general phenomenon of court diversity, see JAKAB, LUDWIG, Gerichtsvielfalt; SEINEKE, The Plural Turn, pp. 30–31.

51 SPIVAK, Can the Subaltern Speak?; GOODICH, Voices.

52 ABREU-FERREIRA, Women; MUCHEMBLED, Fils de Caïn; ROUSSEL, La description; KAMP, Crime.

the pardon procedure was to bring an end to cycles of violence by securing peace between the parties. This often involved a requirement for the petitioner to reach a financial agreement with the victim's family, and in Spain and Portugal, to obtain their formal pardon, a condition that could be indispensable for securing royal mercy. While women were rarely the recipients of pardons due to their lower rates of criminal accusation, they were nonetheless prominently involved in the judicial process as representatives of the victim's side – for instance, speaking on behalf of a murdered husband in cases of homicide. In doing so, they exerted significant influence over judicial outcomes and helped shape the workings of justice itself, particularly the new balance of social coexistence that was established through the pardon process.

Comparatively, the study of pardon records undertaken by Darnele Abreu-Ferrera in her chapter, which investigates the role of enslaved people in early modern Portugal, reveals a far more ambivalent perspective. As Abreu-Ferrera observes, because enslaved individuals did not possess legal personhood, they were objects, rather than subjects, of the pardon procedure. Only their owners held the legal authority to grant a victim's pardon or to submit a petition for pardon on their behalf. As a result, locating traces of enslaved individuals in judicial archives is particularly challenging. Because enslaved individuals who committed crimes had little chance of receiving a pardon, most appear in the archives not as perpetrators, but as victims of violence. As Abreu-Ferrera demonstrates, such violence could result in severe penalties, even if these were ultimately followed by acts of clemency. Enslaved people were treated similarly to minors; they were held accountable for their actions yet deprived of the legal and financial autonomy needed to navigate the justice system or to seek a pardon. Particularly in cases where enslaved individuals were themselves the victims of violence, the judicial records tend to frame the harm as having been suffered primarily by their owners. Consequently, it was the slave-owners who were recognised as the principal legal actors in proceedings involving their enslaved property, and they were typically the ones entitled to receive compensation. The erasure of enslaved individuals and their experiences from criminal records thus appears all the more evident, so much so that some enslaved victims of violence are not even named in these archives. These findings allow Abreu-Ferrera to demonstrate that enslaved individuals' agency in the pardon process was necessarily extremely limited and subordinated to the actions of their masters. This observation ultimately highlights the limitations of a historical approach focused solely on the concept of agency when dealing with individuals deprived of self-determination. It is therefore up to the historian to read between the lines and decode the silences in the sources, in order to better expose, in the words of Abreu-Ferrera, how visible minorities are rendered invisible in legal records.

4. Multilevel Powers and the Construction of Sovereignty

As the manifestation of the ruler's power over the life and death of their subjects, the right to grant pardons is often considered central to early modern state formation and the construction of sovereignty.⁵³ This approach can be partly explained by the fact that many of the pioneering studies on pardon, dating from the late 1980s and early 1990s, focused on its use in centralised monarchies such as France, England, or Castile. At the time, historiography was particularly concerned with exploring the emergence of the modern state as a top-down process.⁵⁴ More recent research into the administration of pardon and the various authorities empowered to grant clemency has considerably nuanced this picture. In the frontier regions of rival monarchies, rulers made strategic use of their right to pardon as a means of asserting sovereignty over these contested borderlands.⁵⁵ Even within their undisputed territories, kings and princes were not always the sole holders of the right to pardon. They frequently had to contend with competing local authorities who possessed their own instruments of pacification in criminal matters and, in some cases, the ability to issue their own pardon letters. This dynamic has been particularly well documented in the Low Countries, where, up to the sixteenth century, princely officers sought to preserve their right to grant remission letters alongside those issued by the dukes of Burgundy and their Habsburg successors.⁵⁶ While some monarchs ultimately succeeded in asserting their monopoly over the power to pardon, in other regions this prerogative remained exclusively in the hands of local governments, as seen in the Italian city-states or in certain towns within the principalities of the Holy Roman Empire.⁵⁷

Beyond the question of the monopoly over the legitimate right to remit crimes, the practical operation of pardoning necessarily involved multiple jurisdictions and layers of authority. As we have seen earlier, processing the large volume of petitions required rulers to rely on an efficient administrative apparatus capable of managing the complex channels of pardon. Even when a pardon letter was formally granted in the name of a king or prince, in reality, it was often the royal or princely council that reviewed the petitions and determined whether a case was eligible for mercy.⁵⁸ In making their decisions, these councillors frequently drew on the investigations

53 NASSIET, MUSIN, *L'exercice*.

54 For critics of this approach, see, for instance, BRADDICK, *State Formation*, pp. 11–20; WATTS, *The Making of Politics*, pp. 23–34; BLOCKMANS, HOLENSTEIN, MATHIEU, *Empowering Interactions*.

55 DAUPHANT, *La rivalité des pardons*.

56 NASSIET, MUSIN, *L'exercice*, pp. 7–8; VROLIJK, *Recht door gratie*, pp. 139–141; BOONE, *Vorstelijk genaderecht*; SCHEPPER, VROLIJK, *La grâce princière*.

57 LUDWIG, Herz; NICCOLI, *Perdonare*.

58 BEAULANT, *Les pratiques de la grâce*, pp. 190–191; VERREYCKEN, *Le fait du prince*.

conducted by local jurisdictions that collected witness testimonies.⁵⁹ And when a pardon was granted, it was often these same local courts that were responsible for its final endorsement or ratification, leading to a new trial in which the narrative presented in the pardon letter was subjected to further scrutiny.⁶⁰

As such, the practice of pardoning was far more than a top-down gesture from the monarchs. It involved the participation of various jurisdictions, whose involvement in the pardoning process often required careful coordination on the part of the central government. This is particularly well illustrated in Rudi Beaulant's contribution, which examines the application of royal pardons in the Duchy of Burgundy in the late fifteenth century. In 1477, following the unexpected death of Duke Charles the Bold on the battlefield, King Louis XI seized the opportunity to invade the duchy of Burgundy and swiftly incorporate it into the Kingdom of France. In this context, granting royal remission letters to his new Burgundian subjects (who had previously sought mercy from their own duke) appears to have been a strategic move to win their political loyalty.⁶¹ This form of "subjection through grace", as Pierre Prétou has called it in his study of the royal conquest of Gascony at the end of the Hundred Years' War,⁶² nonetheless required the royal government to contend with potentially resentful local jurisdictions, which were entrusted with the ratification of the pardon letters. Resolving this situation required a delicate balance between continuity and rupture in judicial practices, beginning with the establishment of a new Parlement in Burgundy, as the king had done in other regions of France. This was not only a way to assert royal authority but also a means of demonstrating that Burgundian subjects were now fully integrated into the French realm and entitled to the same rights and access to justice as the rest of the population.

The bureaucratisation of pardon in the early modern period further underscores the involvement of a wide range of actors in the pardon process. Luke Giraudet's chapter on the numerous pardon dossiers handled by the Privy Council (*Conseil Privé*) of the Habsburg Low Countries vividly illustrates the growing interdependence between the central government and the various layers of provincial authority. Through Giraudet's detailed quantitative survey, the power to pardon emerges here as a flexible and ad hoc instrument, employed by Habsburg sovereigns to respond in different ways to the political and religious crises that gripped the Low Countries in the sixteenth and seventeenth centuries. The exceptional richness of the Privy Council's archives – which, unusually for Europe, preserve not only successful pardon cases but also rejections – allows Giraudet to demonstrate how the Brussels

59 VROLIJK, Les avis; GIRAUDET, Witnesses.

60 BEAULANT, Les pratiques de la grâce, pp. 200–208; OTIS-COUR, Les limites; VERREYCKEN, Crimes et gens, pp. 180–192.

61 VERREYCKEN, Crimes et gens, pp. 234–241.

62 PRÉTOU, Crime, pp. 299–307.

government increasingly relied on local officers to carry out preliminary investigations and to compare petitions with local evidence and witness testimonies. Far from representing the triumph of royal power imposing its merciful will on punitive lower jurisdictions, the pardon procedure instead served to reinforce cooperation and hierarchical relations across different levels of governance, and it is in this sense that it played a key role in state formation.

The considerable expansion of criminal law in the early modern period, marked by increasingly systematic legislation codifying offences, penalties, and judicial procedures, gave rise to a gradual *juridification* of the pardon process, that is, its growing alignment with the formal structures and procedures of written criminal law.⁶³ In this new configuration, the power to pardon was no longer viewed as an exception to legal norms, but rather as a mechanism fully embedded within criminal law, and increasingly governed by administrative procedure. This transformation is the focus of Ulrike Ludwig's contribution, which explores the use of pardon in seventeenth-century Electoral Saxony. Although in this region, pardons continued to be formally issued in the name of the prince, in practice, it was the Privy Council (*Geheimer Rat*) that evaluated the petitions and determined whether clemency should be granted. The prince's role was reduced to formally endorsing their decision. As Ludwig notes, this shift led to a process of decoupling or depersonalisation of the petition from the figure of the ruler. With the procedure now governed by rigid administrative rules rather than the discretionary judgement of the prince or his immediate counsellors, petitioners were no longer expected to craft and submit an individualised, emotionally driven plea for mercy. The conversion of mercy into an administrative act ultimately also contributed to subjects petitioning for criminals who were often complete strangers to them. With their pleas, these 'disinterested third parties' aimed to ensure that the criminals were granted pardons allowing them to pay fines – fines that the petitioners themselves hoped to receive. The standardisation of pardon requests, which increasingly relied on rational legal arguments rather than moral or emotional appeals, enabled these third parties to present petitions in a detached and procedural manner. Consequently, the image of the merciful ruler was no longer constructed through direct interaction with the offender but rather mediated through bureaucratic intermediaries who acted as semi-professional lobbyists.⁶⁴

As the formation of the early modern state progressively distanced the institutions of government from the sole person of the monarch, the power to pardon likewise gradually lost its exclusive character as a manifestation of the sovereign

63 BLICHER, MOLANDER, Mapping Juridification. On the growth of criminal law in the early modern period, see LENMAN, PARKER, *The State*; MONBALLYU, *Six Centuries*; RUDOLPH, SCHNABEL-SCHÜLE, *Justiz*; see also the research reports on the various countries in: DECOCK, *Konfliktlösung*.

64 VERMEESCH, *Professional Lobbying*.

authority. Today, in most Western democratic societies, the legal provisions for clemency increasingly depend on governmental administration or the judiciary itself, rather than solely on the Head of State. However, the example of Trump, with which we opened this introduction, underscores the value of adopting a long-term comparative perspective on the history of pardon. This perspective is pursued by Xavier Rousseaux and Quentin Verreycken in their concluding chapter, where they offer a long-term historical reflection on the complex relationship between pardon, justice, and violence. Their analysis highlights how the history of pardon in medieval and early modern Europe resonates with contemporary debates surrounding international justice. While pardon once served as a powerful tool for affirming sovereignty at the national level, modern mechanisms of clemency and reconciliation in the aftermath of mass violence now function within an increasingly transnational judicial framework. Although medieval and early modern practices of pardoning cannot serve as direct models for contemporary legal systems, exploring their historical complexity offers critical insights. It encourages us to rethink the roles and meanings of clemency today, and perhaps even to envision new pathways to justice and reconciliation on a global scale.

Building on four decades of legal and historical scholarship, this volume invites a renewed, comparative exploration of the history of pardon in late medieval and early modern Europe. As the following chapters demonstrate, such an approach requires close attention to the diversity of political institutions and legal frameworks across regions, as well as to the variety of actors and levels of authority involved in the practice of pardoning. Far from being a fixed prerogative, the power to pardon emerges as a flexible and highly adaptable tool of governance, conflict resolution, and legal development, shaped by institutional structures and shifting political contexts. This adaptability explains both its enduring presence and the remarkable diversity in its application across medieval and early modern Europe. The contributions to this volume thus underscore not only shared patterns in the administration of pardon, but also notable divergences, bringing into focus the tensions, controversies, and practical challenges that royal and princely pardon could generate.

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